ST 95-14
Tax Type: SALES TAX
Issue: Situs for Imposition of Local (Sales) Taxes

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	)	
v.	)	Docket # XXXXX
XXXXX	)	IBT # XXXXX
Taxpayer	)	Karl W. Betz Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: XXXXX, for the Taxpayer.

SYNOPSIS: This case involves XXXXX (hereinafter "taxpayer") of XXXXX, Illinois. A contested hearing on a protested Notice of Tax Liability was heard on April 18, 1995. At hearing, the taxpayer contested certain findings made by the Department Auditor after an audit of the company's books and records for the period of July 1, 1990 through August 31, 1993. The majority of liability assessed by the auditor consisted of Metro East District (MED) Retailers' Occupation Tax and the auditor determined this MED liability both upon retail sales of tangible personal property reported on the monthly sales tax returns (ST-1's) and vehicle sales reported on individual transaction reporting returns (ST-556's). The remaining tax in the assessment consists of State Retailers' Occupation Tax determined to be due upon document fees charged by taxpayer to customers and reported upon its ST-556 returns.

At the hearing, taxpayer acknowledged its liability for the $497.00 State ROT assessed upon the document fees. (Tr. pp. 9-10). This leaves the assessment MED as the only contested issue in this case. The question I

must decide is if taxpayer submitted sufficient evidence to prove that the Department's corrected return is erroneous.

XXXXX, corporation president, testified that while he had heard about the MED tax, his business did not collect and remit it because he was not aware it was applicable. XXXXX testified that when he inquired about the MED tax he received verbal advice that it did not apply. However, taxpayer's witness did not identify the person from whom he allegedly received the oral advice and XXXXX acknowledged that he had not obtained anything in writing from the Department on this issue. (Tr. p. 18).

After a complete review of the record, including all documents admitted at the hearing, I recommend the unresolved issue be decided in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer does business as a Chevrolet dealer in XXXXX, Illinois. (Dept. Ex. No. 2; Tr. p. 15.)

2. In 1978 taxpayer moved from XXXXX to XXXXX, causing it to be located in Mascoutah Township, St. Clair County. (Tr. pp. 14-16, and 21-22.)

3. Taxpayer submitted no documentary evidence showing it had notified the Department of its move into St. Clair County. (Tr. pp. 2, 12-21.)

4. During the entire time of the audit period from July 1990 through August 1993 taxpayer's business location of XXXXX in XXXXX was within Mascoutah Township, St. Clair County. (Dept. Ex. No. 2; Tr. pp. 21-22.)

5. The Department issued Notice of Tax Liability (NTL) XXXXX on December 2, 1993 for $17,421.00 inclusive of tax, penalty and interest. (Dept. Ex. No. 3.)

CONCLUSIONS OF LAW: A basic principle of Illinois sales tax case law is that once the Department has introduced the corrected returns into the

record at hearing, the prima facie case of the Department is established, and for a taxpayer to overcome this, it must introduce competent documentary evidence tied to its books and records to show that the corrected returns prepared by the department are wrong. Copilivitz v. Department of Revenue, 41 Ill. 2d 154 (1968). Because I find the taxpayer's documentary evidence is not sufficiently probative on the contested issue, I conclude the taxpayer has not shown the corrected return (Dept. Ex. No. 1) of the Department to be incorrect.

Taxpayer's Exhibits No. 1 and 2 are filings it made with the Illinois Secretary of State regarding its business location. There is no evidence in this record that the taxpayer furnished the Department copies of these documents prior to the audit in this case and there is no evidence that shows any other written statement being furnished by taxpayer to the Department specifically stating it moved into St. Clair County in 1978.

Taxpayer Ex. No. 3 is a group exhibit that consists of two Department Informational Bulletins and a Notice sent to retailers informing them of a tax rate change. The bulletins in this exhibit were not about the MED tax and these were offered in conjunction with the testimony of taxpayer's witness that the Department had not informed taxpayer about its responsibility to collect and file the MED tax. I do not find this argument of taxpayer persuasive because 86 Admin. Code, ch. 1, Sec. 130.505 entitled "Returns and How to Prepare" states in part:

> "Returns shall be filed on forms prescribed and furnished by the Department. It is the duty of the taxpayer to obtain forms, and failure to obtain them will not be an excuse for failure to file returns when and as required by law."

`This Retailers' Occupation Tax rule has been incorporated by reference into the regulations that govern the MED. See 86 Admin. Code, ch. 1, Sec. 70.120. It means that a taxpayer is under a legal duty to file sales tax returns according to the requirements of Illinois law. Failure to obtain the returns or file the correct rate thereon is not a valid reason to

excuse a taxpayer from its responsibilities.

`Taxpayer testified that he was allegedly told by a Department employee that taxpayer would not be subject to the MED tax. I assign very little probative value to this considering that the alleged speaker was neither identified by taxpayer nor produced at the hearing.

`However, assuming arguendo that the oral statement by the department employee was actually made, I am still required to submit this recommendation in conformance with applicable Department regulations. Subpart J of Department Regulations in effect during the audit time period was entitled "Binding Opinions" and states as follows:

> Section 130.1001 When Opinions from the Department are Binding.
>
> a) Taxpayers must not rely on verbal opinions from Department employees, but will be protected only if the opinion from the Department is in writing. Even then, the opinion ceases to have any effect if the law is changed in any pertinent respect by the General Assembly, or if a pertinent change in the interpretation of the law is made by a Court decision or by some change in the Department's regulations, whether such change is accomplished by means of a new regulation or by means of a revision of an existing regulation.
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> b) The Department may also rescind outstanding written opinions or rulings issued prior to any given specified date by issuing a bulletin or some other form of general public notice to that effect.
>
> c) As used herein, "Regulation" means any Department rule or Regulation of general application, whether called a "Rule", a "Regulation", an "Article" a "Section", a "Part" or something else.

Taxpayer acknowledges he did not obtain a written opinion from the Department informing taxpayer that it was not subject to the MED Mass Transit Tax. The requirement that binding opinions from the Department must be in writing means taxpayer cannot rely on verbal advice given and use that as a defense to escape its liability for MED tax. The reason for the written opinion requirement of 130.1001 is to preserve the written opinion from the Department to a taxpayer as documentary evidence that the advice or opinion was actually given. When a taxpayer states that months

or years earlier he was orally told something by a Department employee in a conversation, one may not be certain about what was actually said by either party as the speaker may misspeak, the listener may not understand, or the speaker's statement or question may not accurately describe his situation.

It is incontrovertible that taxpayer was located within Mascoutah Township of St. Clair County during the audit period. Pursuant to statutory authority (70 ILCS 3610/5.01) there was imposed the Mass Transit MED Retailers' Occupation Tax upon retailers, such as taxpayer, within this location. Based upon this, taxpayer incurred the MED tax liability that is within the NTL.

In summary, I find the taxpayer has not overcome the prima facie case of the Department, and I recommend the assessment and corrected return1 stand as issued.

RECOMMENDATION: Based upon my findings of fact and conclusion of law as stated above, I recommend the Department finalize Notice of Tax Liability No. XXXXX in its entirety and issue a Final Assessment.

Karl W. Betz
Administrative Law Judge

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1. While the NTL (Dept. Ex. No. 3) incorrectly identifies the audit period as 7/1/90 to 8/31/90, taxpayer did not object to or comment upon this at the hearing and I thus consider any objection to be waived. The corrected return (Dept. Ex. No. 1) properly identifies the audit period as 7/90 - 8/93.